No. 16024

In the United States Court of Appeals for the Ninth Circuit

ADVANCE TRUCK COMPANY, A CORPORATION,
PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

On Petition for Review of the Decision of the Tax Court of the United States

BRIEF FOR THE RESPONDENT

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CITATIONS

Cases:

1955, taxpayer filed a petition, under the provisions of Section 272(a)(1) of the Internal Revenue Code of 1939, for redetermination of that deficiency. (R. 3-16.) The decision of the Tax Court was entered on January 29, 1958. (R. 47.) The case is brought to this Court by a petition for review filed on April 14, 1958. (R. 51.) Jurisdiction is conferred on this Court by Section 7482 of the Internal Revenue Code of 1954.

QUESTION PRESENTED

Whether the Tax Court correctly held that the amounts received by the taxpayer in 1950 for services rendered in 1949 are includible in 1950 income when taxpayer properly reported income on the accrual basis in 1950 and properly reported income on the cash basis in 1949.

STATUTES AND REGULATIONS INVOLVED

Internal Revenue Code of 1939:

Sec. 41. General Rule.

The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Commissioner does clearly reflect the income. * * *

(26 U.S.C. 1952 ed., Sec. 41.)

SEC. 42. PERIOD IN WHICH ITEMS OF GROSS INCOME INCLUDED.

(a) [As amended by Section 114 of the Revenue Act of 1941, c. 412, 55 Stat. 687] *General Rule.*—The amount of all items of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under methods of accounting permitted under section 41, any such amounts are to be properly accounted for as of a different period. * * *

* * * *

(26 U.S.C. 1952 ed., Sec. 42.)

Treasury Regulations 111, promulgated under the Internal Revenue Code of 1939:

Sec. 29.41-1. *Computation of Net Income.*— * * * The time as of which any item of gross income or any deduction is to be accounted for must be determined in the light of the fundamental rule that the computation shall be made in such a manner as clearly reflects the taxpayer's income. If the method of accounting regularly employed by him in keeping his books clearly reflects his income, it is to be followed with respect to the time as of which items of gross income and deductions are to be accounted for. * * *

Sec. 29.41-2. *Bases of Computation and Changes in Accounting Methods.*—Approved standard methods of accounting will ordinarily be regarded as clearly reflecting income. A method of accounting will not, however, be regarded as clearly reflecting income unless all items of gross income and all deductions are treated with reasonable consistency. See section 48 for definitions of "paid or accrued" and "paid or incurred." All items of gross income shall be included in the gross income for the taxable year in which they are received by the taxpayer, and deductions taken accordingly, unless in order clearly to reflect income such amounts are to be properly accounted for as of a different period. * * *

The true income, computed under the Internal Revenue Code and, if the taxpayer keeps books of account, in accordance with the method of accounting regularly employed in keeping such books (provided the method so used is properly applicable in determining the net income of the taxpayer for purposes of taxation), shall in all cases be entered in the return. * * *

A taxpayer who changes the method of accounting employed in keeping his books shall, before computing his income upon such new method for purposes of taxation, secure the consent of the Commissioner. * * * Application for permission to change the method of accounting employed and the basis upon which the return is made shall be filed within 90 days after the beginning of the taxable year to be covered by the return. The application shall be accompanied by a statement specifying the classes of items differently treated under the two methods and specifying all amounts which would be duplicated or entirely omitted as a result of the proposed change. Permission to change the method of accounting will not be granted unless the taxpayer and the Commissioner agree to the terms and conditions under which the change will be effected. See section 22(d) and regulations thereunder with respect to changing to optional method of inventorying goods.

* * * *

Sec. 29.42-1. *When Included in Gross Income.*—(a) *In general.*—Except as otherwise provided in section 42, gains, profits, and income are to be included in the gross income for the taxable year in which they are received by the taxpayer, unless they are included as of a different period in accordance with the approved method of accounting followed by him. (See sections 29.41-1 to 29.41-3, inclusive.) * * *

* * * *

STATEMENT

All the facts have been stipulated and found by the Tax Court accordingly. (R. 40.) They may be stated as follows:

Taxpayer is a corporation organized and existing under the laws of the State of California with its principal place of business in Long Beach, California. During all of the years mentioned herein the taxpayer filed its tax returns on a calendar year basis. (R. 40.)

The taxpayer is a common carrier and is engaged in the business of hauling and storing tubular goods for hire. It does not engage in manufacturing, processing, purchasing or selling merchandise. Its business does not require the use of inventories, and inventories are not an income-producing factor. At no time mentioned herein has the taxpayer changed its type of business operation. (R. 40.)

From the date of its incorporation through December 31, 1949, it properly kept its books of account and properly reported its income for federal income tax purposes on the cash receipts and disbursements method. (R. 40.)

On January 16, 1950, the taxpayer received a letter from the Interstate Commerce Commission informing the taxpayer that it was classified as a Class 1 Motor Carrier, and that effective as of January 1, 1950, the taxpayer would be required to keep its accounts in conformity with the Uniform System of Accounts prescribed by the Interstate Commerce Commission. (R. 40-41.)

The system of accounting prescribed by the Interstate Commerce Commission is set forth in Uniform System of Accounts for Class 1 Common and Contract Motor Carriers of Property, Prescribed by the Interstate Commerce Commission in accordance with Part II of the Interstate Commerce Act. The Uniform System of Accounts of the Interstate Commerce Commission prescribes an accrual method of accounting. (R. 41.)

Section 222(g) of the Interstate Commerce Act provides that willful failure or refusal to keep accounts and records in the form and manner prescribed by the Commission shall be a misdemeanor punishable by a fine of not more than $5,000 for each offense. (R. 41.)

In conformity with the directive of the Interstate Commerce Commission the taxpayer, as of January 1, 1950, changed its method of accounting to the method prescribed in the Uniform System of Accounts. The taxpayer has kept its books and records on an accrual basis commencing January 1, 1950, to the present time. (R. 41.)

On or before March 15, 1951, the taxpayer filed its income tax return for the calendar year 1950, in which it reported gross receipts from its operations in the amount of $284,092.54. Included in this amount was income from services rendered in 1950 of $18,467.96 which was represented by accounts receivable at December 31, 1950. Also included in gross receipts was the sum of $20,431.48, which amount was collected during the month of January, 1950, for services rendered during the month of December, 1949. On the accrual method of accounting, the latter amount would have represented accounts receivable at December 31, 1949. (R. 41-42.)

The taxpayer reported cost of operations in the amount of $140,629.46, which sum included the amount of $196.20 which represented accounts payable at December 31, 1950. The amount of income and excess profits tax shown to be due on the return was the sum of $27,603.51. (R. 42.)

While the taxpayer stated on the income tax return for 1950 that the return was made on the basis of cash receipts and disbursements, as has been stipulated, it actually was prepared on the accrual basis. (R. 42.)

On or about December 3, 1951, the taxpayer filed an amended income tax return for the calendar year 1950 showing an additional amount of income tax due. The total income and excess profits tax paid by the taxpayer for the calendar year 1950 was in the amount of $29,545.18. (R. 42.)

The taxpayer has not any time filed an application requesting the permission of the Commissioner to change the method of keeping its books of account or manner of reporting its income from a cash receipts and disbursements method to an accrual method. (R. 42-43.)

On May 11, 1955, the Commissioner issued a notice of deficiency in which he accepted taxpayer's income tax return for the calendar year 1950 which was prepared and filed upon the accrual basis. In this statutory notice of deficiency, certain adjustments were made which are not contested here but the Commissioner did not eliminate from taxpayer's income for 1950 the accounts receivable at December 31, 1949 in the amount of $20,431.48. (R. 43.)

Taxpayer now concedes that the Commissioner may require it to report its income on the accrual basis but contends that its income must be recomputed by eliminating the accounts receivable at the beginning of the year 1950. (R. 43.)

The Tax Court sustained the Commissioner's determination that the accounts receivable at December 31, 1949—representing amounts actually received in January, 1950, for services performed in 1949—should not be eliminated from 1950 income because the amounts were received in 1950 and are not "properly accounted for", under Section 42, Internal Revenue Code of 1939, in any year other than 1950. (R. 44-46.)

SUMMARY OF ARGUMENT

Taxpayer's cash method of computing its net income for 1949 was properly in accordance with its accounting method employed in keeping its books. The accounts receivable involved would not constitute income to taxpayer for tax purposes until received by it. The uncollected accounts receivable at the end of 1949 were not properly reportable as income by taxpayer in that year because payment had not been received by taxpayer. The accounts receivable did not accrue as income to taxpayer in 1949 because taxpayer was properly on the cash method in 1949.

If the accrual method had been proper in 1949, the accounts receivable would have accrued in that year. However, taxpayer changed to the accrual method in maintaining its books and reporting its income in 1950. Also, in that year taxpayer collected the accounts receivable which, indisputably, constitute an item of income. Having received, in 1950, an item of income which is not "properly accounted for" as of a different period, taxpayer must include the amount thereof in its 1950 income. The accounts receivable had a tax cash basis established for them and the year of receipt continued to determine the time when they were taxable. If taxpayer had continued in 1950 to maintain its books and report income on the cash method as it had done since its incorporation, unmistakably the amount involved would be includible in its 1950 income.

If the amount involved is not includible in taxpayer's 1950 income, it will be omitted entirely and escape taxation. The Internal Revenue Code does not contemplate such a result. An adjustment such as here is ordinarily the kind of adjustment required by the Commissioner when a taxpayer seeks the Commissioner's consent to change his accounting method.

The cases following the principle of the *Mnookin's Estate* case are not applicable because in those cases the taxpayers had reported income on an improper accounting method prior to the years in controversy.

The Committee Reports show that Section 481 of the Internal Revenue Code of 1954 does not indicate any lack of authority by the Commissioner to make the adjustment required here. Moreover, that Section is only applicable to taxable years not here involved.

Accordingly, the Tax Court correctly held that the amounts which were received in 1950 for services rendered in 1949 are includible in taxpayer's 1950 income when taxpayer properly reported income on the accrual basis for 1950 and properly reported income on the cash basis for 1949.

ARGUMENT

The Tax Court Correctly Held That The Amounts Received By The Taxpayer In 1950 For Services Preformed In 1949 Are Includible In 1950 Income When Taxpayer Properly Reported Income On The Accrual Basis For 1950 And Properly Reported Income On The Cash Basis For 1949

Section 41, Internal Revenue Code of 1939, *supra*, requires the computation of net income upon the basis of a taxpayer's annual accounting period in accordance with the method of accounting regularly employed in keeping such taxpayer's books.[1] It has been stipulated by the parties that from the date of its incorporation through December 31, 1949, taxpayer properly kept its books of account and reported its income for federal income tax purposes on the cash receipts and disbursements method. (R. 21, 40.). The amount involved, i.e., $20,431.48 which was included by the taxpayer in its original and first amended income tax returns for 1950 but which it now seeks to eliminate from gross income for that year represents on the accrual method of accounting accounts receivable at the end of 1949 for services performed in 1949. (R. 42.) This sum was not included in taxpayer's 1949 income tax return, in accordance with taxpayer's proper cash method of reporting income, because the sum was not received in 1949. Accrual of this sum in 1949 was not appropriate because taxpayer maintained its books and properly reported its income on the cash basis. (R. 40.)

Two significant events occurred in 1950: (1) Taxpayer changed the method of keeping its books from the cash method to the accrual method (R. 41), and (2) taxpayer received, in January, 1950, the entire

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[1] If the method of accounting does not clearly reflect taxpayer's income, Section 41 authorizes the Commissioner to compute the income in accordance with such method as in his opinion does clearly reflect income. It is the Commissioner's position that the cash method in 1949 and the accrual method in 1950 were proper here. No question of taxpayer's method clearly reflecting income, therefore, is involved for the year in question.

sum representing the accounts receivable at the end of 1949 for services performed during 1949 (R. 42).

Conformably to Section 41 which as noted requires a taxpayer to compute net income in accordance with the method of accounting regularly employed in keeping its books, taxpayer properly reported its income for 1950 based upon the same method employed in maintaining its books, the accrual method.[2]

There is no dispute that the amount involved is an item of income. As we will show it must be included in taxpayer's income for 1950, as the Tax Court held.

Section 42, Internal Revenue Code of 1939, *supra,* requires the inclusion of *all* items of gross income in the gross income for the taxable year in which received by taxpayer, "unless, under methods of accounting permitted under section 41, any such amounts are to be *properly accounted for* as of a different period." (Italics supplied.) As the Tax Court said (R. 45):

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[2] Treasury Regulations 111, Section 29.41-2, *supra,* in order to promote consistent accounting practices from year to year, requires a taxpayer who changes his method of accounting in keeping his books to obtain the Commissioner's consent before computing his income upon such new method for tax purposes. Taxpayer did not secure the Commissioner's consent here (R. 42-43), but the Commissioner has accepted the change as he has a right to do (R. 43). *Fowler Bros. & Cox* v. *Commissioner,* 138 F. 2d 774, 776 (C.A. 6th); *Geometric Stamping Co.* v. *Commissioner,* 26 T.C. 301, 304-305; *Gus Blass Co.* v. *Commissioner,* 9 T.C. 15, 35. In any event, taxpayer concedes that the Commissioner may require it to report its 1950 income on the accrual basis. (R. 43.)

> The statute is designed to see to it that all items of gross income shall be properly accounted for in gross income for some year. No item of gross income is to escape. It names the year "in which received" as the proper year to include the item unless, by virtue of some permissible method of accounting, the item is to be properly accounted for as of a different period. Since the $20,431.48 was received in 1950, that is the year it is to be included in gross income unless petitioner can show the item should have been "properly accounted for" in 1949. Far from showing that this item should have been properly accounted for in 1949, petitioner in effect, stipulates that this item could not have been "properly accounted for" in 1949. That is the full force of the stipulation that petitioner in the year 1949 "properly kept its books of account and properly reported its income for Federal income tax purposes on the cash receipts and disbursements method." In short, the stipulated facts preclude the application of the "unless" clause of the statute.

Since under Section 42, the amount in question may not be properly accounted for in 1949, it must be included in taxpayer's income for 1950, the year "in which received". *Sivley* v. *Commissioner*, 75 F. 2d 916, 917 (C.A. 9th); *Ross* v. *Commissioner*, 169 F. 2d 483 (C.A. 1st); *Goodrich* v. *Commissioner*, 243 F. 2d 686 (C.A. 8th). See also *Healy* v. *Commissioner*, 345 U. S. 278.

The inclusion of the amount in question in taxpayer's 1950 income obviously increases its income and its tax. This result, however, is not due to any fault of the Commissioner. Had taxpayer continued in 1950 to maintain its books and report income on the cash basis, as it had done since its incorporation, unmistakably the amount involved would be includible in its 1950 income. Treasury Regulations 111, Section 29.42-1, *supra.*

The Commissioner did not compel taxpayer to change its accounting method. However, "When the method of reporting income is changed it is necessary in certain cases to make some adjustment to protect the taxpayer and the revenue." *Gus Blass Co.* v. *Commissioner*, 9 T.C. 15, 34. If taxpayer had requested the Commissioner's consent to change its accounting method, an adjustment to take into account the amount involved is the type of adjustment contemplated and necessary in order to prevent a loss of revenue and a windfall to taxpayer. See Treasury Regulations 111, Section 29.42-2, *supra.* As this Court has said (*Kahuku Plantation Co.* v. *Commissioner*, 132 F. 2d 671, 674):

> It is practically impossible to shift from one complicated accounting system to another without some distortion and *it is the duty of the Commissioner* to provide in the agreement for the change in accounting that the distortion is not at a loss to the Government's income. * * * [Italics supplied.]

See also *Gus Blass Co.* v. *Commissioner, supra; Goodrich* v. *Commissioner, supra.*

Since a taxpayer who complies with the Regulations and seeks the Commissioner's consent to change his accounting method must agree to an adjustment, similar to the inclusion in taxpayer's 1950 income here, before the Commissioner's consent is obtained, certainly this taxpayer, not having requested the Commissioner's consent, is not entitled to a favored position. Nor does the nature of taxpayer's business, subject as it was to regulation by the Interstate Commerce Commission, entitle taxpayer to a favored position. In this connection the Tax Court aptly stated (R. 46):

> The fact that the change from the cash, to the accrual method of keeping its books was involuntary, and done upon the order of the Interstate Commerce Commission, is not material.

Taxpayer cites *Goodrich* v. *Commissioner*, *supra* (Br. 10), and refers to that case saying (Br. 11):

> The courts in the above cases have unanimously held that on the changeover from a cash to an accrual method of reporting income the strict accrual method must be used in computing income for the taxable year of the changeover.

This is not an accurate statement pertaining to the *Goodrich* case which unequivocably supports the Commissioner's contention here. In the *Goodrich* case, the established cash basis status of the item of income was controlling, not taxpayer's strict accrual method. The court said (p. 691):

> The accounts involved had had an income status created for them on a cash-realization basis, under the accounting method which the taxpayer had employed as to them. This established status of taxability for the particular accounts could hardly be said, we think, to have

> been altered by the taxpayer's change in his method of accounting designed to create a different status simply as to his future sales. The previous accounts were not assets which bore an inseparable relationship to his future sales, either as a matter of business operation or of tax payment, and economically the realization of income from them on the basis of their cash status would not in any way be effected by his accrual treatment of his future sales. The previously accumulated bills receivable were assets which he had treated and left as involving a realization of income to him when they were paid. As a matter of fact, the record indicates that he continued so to recognize them in the years subsequent to 1949, by reporting as income and paying tax on such cash as he realized from them in each year.

Clearly, therefore, the Court of Appeals in the *Goodrich* case held that, since the use of the cash method was proper in the year prior to the change, the accounts receivable of that year retained their cash basis character, hence, the taxable event of *receipt* continued to determine when they would be taken into income. The amount of the accounts receivable in that case did not escape taxation. Since the receipt of the amounts involved in the *Goodrich* case was spread over several years, the Court of Appeals remanded the case to the Tax Court for redetermination of the tax due in the year before the Tax Court, taking into account the amount of the accounts receivable received in that year.

Applying the principle of the *Goodrich* case to the facts here, the amount in question was includible in taxpayer's 1950 income because taxpayer received in that year *all* of the accounts receivable which had "an income status created for them on a cash-realization basis, under the accounting method which the taxpayer had employed as to them." See also *Walker* v. *Commissioner*, decided May 8, 1956 (1956 T.C. Memorandum Decisions, par. 56,110).

Including this amount in the taxpayer's income for 1950 is entirely in accordance with the fundamental rule that income tax liability is to be computed on the basis of an annual accounting based upon facts existing during the annual tax period in question.[3]

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[3] As stated by the Supreme Court in the *Healy* case (pp. 281, 284-285):

> One of the basic aspects of the federal income tax is that there be an annual accounting of income. Each item of income must be reported in the year in which it is properly reportable and in no other. * * *
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> * * * *
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> Congress has enacted an annual accounting system under which income is counted up at the end of each year. It would be disruptive of an orderly collection of the revenue to rule that the accounting must be done over again to reflect events occurring after the year for which the accounting is made, and would violate the spirit of the annual accounting system. This basic principle cannot be changed simply because it is of advantage to a taxpayer or to the Government in a particular case that a different rule be followed.

Again the Supreme Court stated in the *Security Mills Co.* case, *supra* (pp. 286-287):

> This legal principle has often been stated and applied. The uniform result has been denial both to Government and to taxpayer of the privilege of allocating income or outgo to a year other than the year of actual receipt or payment, or, applying the accrual basis, the year in which the right to receive, or the obligation to pay, has become final and definite in amount.

Healy v. *Commissioner*, 345 U. S. 278; *Security Mills Co.* v. *Commissioner*, 321 U. S. 281; *Burnet* v. *Sanford & Brooks Co.*, 282 U. S. 359.

Taxpayer's reliance upon cases as typified by *Commissioner* v. *Mnookin's Estate*, 184 F. 2d 89 (C.A. 8th) (Br. 10-11), is misplaced. In those cases, in years prior to the year in controversy, a method other than the accrual method of reporting income improperly had been employed.[4] In accordance with the proper accrual method for those taxpayers, the amounts representing the accounts receivable in dispute would have accrued prior to the controverted year of change to the accrual method. The courts denied the Commissioner the right to include the amount in dispute in income for the year of change because such amounts were taxable only in the prior year when they accrued since those taxpayers should *properly* have been required to report on the accrual basis in such prior years. As we have pointed out taxpayer here concedes that reporting its income on

[4] Four of the cases, *Welp* v. *United States*, 201 F. 2d 128 (C.A. 8th); *Commissioner* v. *Dwyer*, 203 F. 2d 522 (C.A. 2d); *Commissioner* v. *Schuyler*, 196 F. 2d 85 (C.A. 2d), and *Bauman* v. *Commissioner*, 22 T.C. 7, involve deducting in the year of change to the accrual method amounts representing the opening inventory for the year of change to the accrual method. The courts denied the Commissioner the right to disallow the deduction. The amount of the opening inventory for the year of change to the accrual method would not have been deductible in a year prior to the year of change. However, because those taxpayers improperly reported on the cash basis in prior years, the amounts representing opening inventory for the year of change had been deducted as purchases in a prior year.

the cash basis for 1949 was *proper* as was reporting its income on the accrual basis in 1950. (R. 40, 43.) The amount here could not have been accrued in 1949 as we have shown. The *Mnookin's Estate* case and those cases following its principle, therefore, are inapposite.

Taxpayer asserts that the Tax Court's reasoning is precisely the same as that in *William Hardy, Inc.* v. *Commissioner*, 82 F. 2d 249 (C.A. 2d), which the Second Circuit overruled in *Commissioner* v. *Dwyer*, 203 F. 2d 522. This is indeed a specious argument. The *Hardy* case is distinguishable on the same ground as those cases typified by the *Mnookin's Estate* case, i.e., taxpayer in the *Hardy* case improperly reported on the cash basis in the year prior to the change to the accrual method. If taxpayer had always properly reported on the accrual method, the accounts receivable would have accrued prior to the controverted year of change. Here, if taxpayer had reported income on the accrual method in 1949, and if that method were proper, the accounts receivable would have accrued in that year and this tax controversy could not have arisen. The sum representing accounts receivable was included in the taxpayer's income in the year of receipt in both the *Goodrich* and *Walker* cases, *supra*. Likewise, the amount of the accounts receivable here should be included in this taxpayer's income in the year of receipt, 1950, and the fact that the Second Circuit overruled the *Hardy* case is not controlling here.[5]

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[5] To the extent, however, that the overruling of the *Hardy* case may be considered at variance with the result required

Taxpayer's argument that its strict accrual method of 1950 controls all items ignores the fact of its change in accounting in that year and Section 42. The Tax Court said (R. 46-47):

> The answer to this argument is that under section 42, *supra*, every taxpayer is required to report every item of gross income that he receives in some year. It is either the year of receipt or some other year when it could be properly accounted for. When, as here, there is no other year when it could properly be accounted for, then the fact that the year of receipt is an accrual year for reporting, is immaterial. The statute does not say the item shall be included in income in the year of receipt, if that would be proper according to the method of accounting then being employed by the taxpayer. The method of accounting of the taxpayer in the year of receipt, and whether that method was the result of a voluntary or involuntary change-over, are both immaterial.

Contrary to taxpayer's assertion (Br. 12), Section 481 of the Internal Revenue Code of 1954 does not indicate a lack of authority on the part of the Commissioner under the Internal Revenue Code of 1939 to make an adjustment as here. Section 481(a) provides:

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by applying the principle of the *Goodrich* and *Walker* cases, which were decided after the *Hardy* case was overruled, we submit that the overruling of the *Hardy* case deserves reexamination.

SEC. 481. ADJUSTMENTS REQUIRED BY CHANGES IN METHOD OF ACCOUNTING.

(a) *General Rule.*—In computing the taxpayer's taxable income for any taxable year (referred to in this section as the "year of the change")—

(1) if such computation is under a method of accounting different from the method under which the taxpayer's taxable income for the preceding taxable year was computed, then

(2) there shall be taken into account those adjustments which are determined to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted, except there shall not be taken into account any adjustment in respect of any taxable year to which this section does not apply.

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(26 U.S.C. 1952 ed., Supp. II, Sec. 481.)

The Committee Reports [6] recognize that every item of

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[6] H. Rep. No. 1337, 83rd Cong., 2d Sess., p. A164 (3 U.S.C. Cong. & Adm. News (1954) 4017, 4303):

> If there is a change in the method of accounting employed in computing taxable income from the method employed for the preceding taxable year, adjustments must be made in order that every item of gross income or deduction is taken into account and that none are omitted. At the same time no item is to affect the computation of taxable income more than once. It is only those omissions or doubling ups which are due to the change in method which must be adjusted.
>
> Under present law these adjustments are made whenever the taxpayer requests permission to change his

income must be taken into account and that none are to be omitted. Moreover, it is pointed out that under present law adjustments are made whenever a taxpayer requests permission to change his accounting method. The only instance noted where the Commissioner has been denied authority to make adjustment is when he forces taxpayer to change his accounting method. The Commissioner has not forced taxpayer to make a change in the instant case. Therefore, the instance recognized in the report does not prevail here and Section 481 does not indicate any lack of authority by the Commissioner to make the adjustment here required. Furthermore, that Section with minor exceptions not here material is only applicable to taxable years beginning after 1953. See Section 7851 of the 1954 Code.

CONCLUSION

In 1949, taxpayer properly kept its books and reported its income for federal tax purposes based on the cash method. Its uncollected accounts receivable, therefore, did not constitute income in 1949. These uncollected amounts were not accruable in 1949 because taxpayer properly reported income on

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method of accounting. Where the Commissioner forces a taxpayer to change his method of accounting because the old method does not clearly reflect income, various court decisions have denied the Commissioner the right to make the necessary adjustments.

S. Rep. No. 1622, 83d Cong., 2d Sess. p. 307 (3 U.S.C. Cong. & Adm. News (1954) 4621, 4947), contains identical language.

the cash method. When taxpayer changed its accounting to the accrual method in 1950, it properly reported its income on the accrual method. The uncollected 1949 accounts receivable which were paid in 1950 are includible in taxpayer's 1950 income because the amounts were received in that year and such amounts are not "properly accounted for" as of a different period. Accordingly, the decision of the Tax Court is correct and should be affirmed.

Respectfully submitted,

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